

Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re FACEBOOK PPC) Master Case No.
Advertising Litigation,) 5:09-cv-03043 JF
)

This Document Related To:)
All Actions.)

-----)

VIDEOTAPED DEPOSITION OF NATHAN FOX
JUNE 21, 2011

REPORTED BY:

JANIS JENNINGS, CSR 3942, CLR, CCRR

Page 1

1 this complaint.

2 Q. Well, let me ask you, then: What is your
3 understanding of the term "invalid clicks"?

4 MS. RIVAS: Objection. Seeks a legal
5 conclusion. Lacks foundation. 10:09:30

6 THE WITNESS: It seems to me that that's
7 what this case is about, is what is a valid click
8 and what is not a valid click. I think I should
9 have to pay for valid clicks and not have to pay for
10 invalid clicks. 10:09:44

11 BY MR. SOMVICHIAN:

12 Q. Okay. So tell me what your understanding
13 is of the types of invalid clicks that you don't
14 think you should be charged for.

15 MS. RIVAS: Objection. Seeks a legal 10:09:56
16 conclusion. Calls for expert testimony. Lacks
17 foundation.

18 THE WITNESS: Yeah. The reason why I got
19 involved in this case is that I had a suspicion
20 based on my Google Analytics that there was a 10:10:11
21 problem. And that's why I quit advertising with
22 Facebook, is because I didn't think that I was
23 getting good-quality traffic from Facebook. I think
24 it's really to my attorneys and to expert testimony
25 to figure out what a valid click is and what an 10:10:30

Page 34

1 MS. RIVAS: Same objections.

2 THE WITNESS: I feel like that's what this
3 case is about, and I feel like it's going to require
4 more investigation and experts -- you know, I was
5 under the understanding that there were supposed to 10:16:35
6 some systems in place to protect me from invalid
7 clicks, whatever that means. These clicks seemed
8 invalid to me.

9 BY MR. SOMVICHIAN:

10 Q. Did you think that they were invalid 10:16:51
11 because they might have come from automated sources
12 and not from real people? Is that part of the
13 reason why you thought that they were not good
14 quality, to use your words?

15 MS. RIVAS: Objection. Lacks foundation. 10:17:03
16 Vague and ambiguous. Seeks a legal conclusion.

17 THE WITNESS: Yeah. I have no idea. I
18 know the results, which is that it looked like
19 bad -- it looked like a bad deal to me.

20 BY MR. SOMVICHIAN: 10:17:17

21 Q. What do you mean by "a bad deal"?

22 A. Like I wasn't getting my money's worth,
23 like somehow something was wrong. Just seemed -- it
24 seemed like I was getting ripped off.

25 Q. Well, you knew and expected at the time 10:17:34

1 basis to become a party to the lawsuit, so
2 regardless of what your lawyers may have told you
3 recently, what was in your mind when you made the
4 decision "I want to be a named plaintiff in this
5 lawsuit to sue Facebook"? 10:20:57

6 MS. RIVAS: Objection. Asked and
7 answered. Seeks a legal conclusion. Vague and
8 ambiguous.

9 THE WITNESS: Yeah. The reason I am here
10 is because -- in the first place is because the 10:21:05
11 Analytics suggested that I had gotten ripped off.

12 BY MR. SOMVICHIAN:

13 Q. Okay. Other than the Analytics program,
14 did you have any other basis to think that you had
15 been overcharged by Facebook at the time that you 10:21:22
16 filed your lawsuit?

17 MS. RIVAS: Objection. Seeks a legal
18 conclusion. Vague and ambiguous.

19 MR. SHUB: At the time he filed the
20 lawsuit, you had already talked to him, so it is 10:21:31
21 attorney-client privilege.

22 MS. RIVAS: And it is attorney-client
23 privileged, to the extent it is something that we
24 talked about. And you can tell him what you know,
25 that you -- your own experience. 10:21:43

Page 44

1 THE WITNESS: I am here because of the
2 Google Analytics.

3 BY MR. SOMVICHIAN:

4 Q. Setting aside your lawyer's coaching, did
5 you have any other basis, independent basis from 10:21:58
6 your own experience and knowledge, other than what
7 they told you to support filing a complaint against
8 Facebook?

9 MS. RIVAS: Objection. Argumentative.
10 Vague and ambiguous. You are seeking a legal 10:22:09
11 conclusion, and it's protected by attorney-client
12 privilege.

13 BY MR. SOMVICHIAN:

14 Q. My question is specifically setting aside
15 anything that you were told by your lawyers. Okay? 10:22:23

16 MS. RIVAS: He's asked -- you've asked
17 that, and he's answered it.

18 MR. SHUB: About four or five times, the
19 same answer. You don't like it, but it is the same
20 answer. 10:22:39

21 THE WITNESS: I am here because of the
22 Analytics.

23 BY MR. SOMVICHIAN:

24 Q. Okay. Have you ever spoken to any of the
25 other named plaintiffs in this case? 10:22:49

Page 45

1 THE WITNESS: I'm not sure what types of
2 clicks are involved in the lawsuit.

3 BY MR. SOMVICHIAN:

4 Q. You aren't?

5 A. I know that there -- I suspected that I 10:47:14
6 was getting ripped off in my deal with Facebook.
7 The -- the Analytics made it look like it was
8 something that I probably shouldn't have been
9 charged for.

10 So I think that's what we're here to 10:47:33
11 figure out, is whether I should have been charged
12 for those or not. And I don't know what types of --
13 I have no -- I don't even know what any of those
14 clicks looked like. I just know that they,
15 according to Analytics, were on my site for one 10:47:44
16 second. That seems like a bad deal, so that's why I
17 am here.

18 Q. Mr. Fox, you understand that the complaint
19 is a class-action complaint; correct?

20 A. Yes. 10:47:53

21 Q. And you understand that means that you and
22 your lawyers are seeking to represent not just you
23 and the other named plaintiffs, but also a class of
24 advertisers who advertise on Facebook. Do you
25 understand that? 10:48:05

Page 62

1 invalid. I don't have my own opinion.

2 BY MR. SOMVICHIAN:

3 Q. And you also don't have any basis to
4 believe that that's an invalid click; right?

5 MS. RIVAS: Objection. Argumentative. 10:57:28
6 Seeks a legal conclusion. Vague and ambiguous.

7 THE WITNESS: I don't know what's a valid
8 click and what's an invalid click.

9 BY MR. SOMVICHIAN:

10 Q. Well, let me ask the questions this way. 10:57:37
11 You never formed an expectation that Facebook would
12 not charge you for that type of click; right?

13 MS. RIVAS: Vague and ambiguous.

14 THE WITNESS: I had an expectation that I
15 would be protected from invalid clicks. I thought 10:57:48
16 that there were systems in place to protect me from
17 invalid clicks, whatever -- however that was
18 defined.

19 BY MR. SOMVICHIAN:

20 Q. Okay. And at the time that you became a 10:57:57
21 Facebook advertiser, did you expect that Facebook
22 would not charge you for the types of clicks that I
23 described?

24 MR. SHUB: Objection. Asked and answered.

25 Come on. 10:58:10

whatever that means.

BY MR. SOMVICHIAN:

Q. Do you have any idea of what a "bot" is in the context of the Internet?

MS. RIVAS: Objection. Vague and ambiguous. 11:01:27

MR. SHUB: Lacks foundation.

MS. RIVAS: It lacks foundation.

THE WITNESS: I -- I don't know. Some
sort of a computer program or a script. 11:01:33

BY MR. SOMVICHIAN:

Q. What's a "script"?

A. I'm not a programmer. I guess, like a little bit of code that does things. I don't know.

Q. Do you have any understanding one way or the other about whether bots can lead to clicks on ads?

MS. RIVAS: Objection. Lacks foundation.
Seeks a legal conclusion. Incomplete hypothetical.

THE WITNESS: I have no idea what bots can do and can't do. 11:02:04

BY MR. SOMVICHIAN:

Q. Do you have any opinion one way or the other about whether any clicks that might originate from a bot should be billed or not to advertisers? 11:02:13

1 MS. RIVAS: Objection. Lacks foundation.
2 Seeks a legal conclusion. Vague and ambiguous.

3 THE WITNESS: I have no idea.

4 BY MR. SOMVICHIAN:

5 Q. Do you have any -- strike that. 11:02:25

6 You don't know whether a click that
7 originates from a bot should be considered a
8 fraudulent click or an invalid click or any other
9 click; right?

10 MS. RIVAS: Objection. Seeks a legal 11:02:57
11 conclusion. Lacks foundation. Vague and ambiguous.

12 THE WITNESS: I don't know what bots do.
13 I don't know whether we should be charged. I don't
14 know.

15 BY MR. SOMVICHIAN: 11:03:03

16 Q. Do you know whether clicks from bots are
17 part of this case or not?

18 MS. RIVAS: Objection. Seeks a legal
19 conclusion. Lacks foundation. Vague and ambiguous.

20 THE WITNESS: I don't know. 11:03:17

21 BY MR. SOMVICHIAN:

22 Q. Do you know if multiple clicks that come
23 from the same user are part of this case or not?

24 MS. RIVAS: Same objections.

25 BY MR. SOMVICHIAN: 11:03:26

1 Q. No idea; right?

2 A. I -- I don't know.

3 Q. Have you ever heard about instances where
4 competitors click on the ads of -- well, let me --
5 let me start over. 11:03:58

6 Have you ever heard of instances where
7 somebody will click on the ad of a competitor in
8 order to deplete their advertising budget?

9 MS. RIVAS: Vague and ambiguous.

10 MR. SHUB: Lacks foundation. 11:04:09

11 THE WITNESS: I have heard of that, yeah.

12 BY MR. SOMVICHIAN:

13 Q. I'm not asking you whether you're aware of
14 a specific instance of that. I'm just simply asking
15 you whether you've heard of that issue. 11:04:18

16 MS. RIVAS: Objection. Vague and
17 ambiguous. Lacks foundation.

18 THE WITNESS: Yes, I've heard of that
19 issue.

20 BY MR. SOMVICHIAN: 11:04:24

21 Q. Do you have any understanding of whether
22 those types of clicks are part of this case or not?

23 MS. RIVAS: Objection. Seeks a legal
24 conclusion. Vague and ambiguous. Lacks foundation.

25 THE WITNESS: I don't know. I mean, like 11:04:37

Page 78

1 the other things, that's something that I would rely
2 on my lawyers and my experts to determine.

3 BY MR. SOMVICHIAN:

4 Q. Okay. But you don't have an independent
5 opinion about whether that type of click should be 11:04:47
6 in this case or not; right?

7 MS. RIVAS: Same objections. And asked
8 and answered.

9 THE WITNESS: I don't have an independent
10 opinion. 11:04:54

11 BY MR. SOMVICHIAN:

12 Q. And you are relying solely on your
13 attorneys and experts to determine whether those
14 types of clicks should be in this case; correct?

15 MS. RIVAS: Objection to the extent it 11:05:01
16 misstates his testimony.

17 MR. SHUB: It is argumentative as well.

18 MS. RIVAS: And argumentative.

19 THE WITNESS: Yeah. I don't have an
20 opinion whether it should be -- that should be part 11:05:11
21 of the case or not part of the case.

22 BY MR. SOMVICHIAN:

23 Q. Do you expect to give input to your
24 lawyers about whether that type of click should be
25 part of this case or not? 11:05:35

1 that means there weren't any systems or whether the
2 system were inadequate, I don't know.

3 BY MR. SOMVICHIAN:

4 Q. So my question was, Do you believe that
5 this document is misleading to you as an advertiser? 11:22:09

6 MS. RIVAS: Objection. Seeks a legal
7 conclusion. Vague and ambiguous. Overbroad.

8 THE WITNESS: In my opinion, yeah, I don't
9 think I was protected from invalid clicks.

10 BY MR. SOMVICHIAN: 11:22:28

11 Q. So what aspect of this document do you now
12 believe to be misleading?

13 A. The part where it says I was going to be
14 protected, only charged for legitimate clicks.

15 Q. When you read this, what -- did you have 11:22:40
16 an understanding of what a legitimate click would
17 be?

18 MS. RIVAS: Objection. Seeks a legal
19 conclusion.

20 THE WITNESS: Yeah. And I didn't form an 11:22:54
21 opinion as to that. I just thought that -- I read
22 this representation, and I thought that according to
23 this there would be some systems in place to protect
24 me, and that's all I knew. That's all I thought
25 about it. 11:23:07

Page 93

1 there were systems there that would protect me from
2 being charged for things I shouldn't be charged for.

3 BY MR. SOMVICHIAN:

4 Q. Okay. But you understood that they
5 weren't going to be 100 percent effective in all 11:32:48
6 instances; right?

7 MS. RIVAS: Same objections. Asked and
8 answered.

9 THE WITNESS: That's right.

10 MR. SOMVICHIAN: Now it's answered. 11:32:56

11 MR. SHUB: Okay. You got what you wanted.
12 The first one of the day. Congratulations.

13 Should we take a break? You got the tape
14 to change.

15 MR. SOMVICHIAN: Sure. That's fine. 11:33:08

16 THE VIDEOGRAPHER: We are going off the
17 record. The time is 11:33 a.m.

18 This marks the end of disk No. 1 in the
19 deposition of Nathan Fox.

20 (Whereupon, lunch was taken from 12:50:29
21 11:33 a.m. until 12:50 p.m.)

22 THE VIDEOGRAPHER: We are back on the
23 record. The time is 12:51 p.m.

24 This marks the beginning of disk No. 2 in
25 the deposition of Nathan Fox. 12:51:07

1 actually spent more time than people who got to your
2 site through your Facebook ads other than just
3 looking at the numbers in front of you here; right?

4 MS. RIVAS: Objection. Vague and
5 ambiguous. Seeks a legal conclusion. 13:38:21

6 THE WITNESS: Again, I based my actions on
7 this.

8 BY MR. SOMVICHIAN:

9 Q. Okay. You didn't do an independent
10 assessment of the number of pages that users visited 13:38:32
11 who came from Yelp; right?

12 MS. RIVAS: Objection. Vague and
13 ambiguous.

14 THE WITNESS: I did not do that.

15 BY MR. SOMVICHIAN: 13:38:39

16 Q. Do you have -- do you have any idea how --
17 whether you could have done that?

18 MS. RIVAS: Objection. Calls for
19 speculation.

20 THE WITNESS: Yeah. I'm not an expert. I 13:38:46
21 don't know how that would go.

22 BY MR. SOMVICHIAN:

23 Q. Who set up your Google Analytics tracking
24 for your website? Did you --

25 MS. RIVAS: Objection. Asked and 13:38:57

1 answered.

2 BY MR. SOMVICHIAN:

3 Q. Did you do that?

4 A. Four Dog.

5 Q. Did you -- were you involved in any way in 13:39:01
6 that process?

7 MS. RIVAS: Objection. Asked and
8 answered.

9 THE WITNESS: As I recall, I just gave
10 them the access to the account, and they took care 13:39:12
11 of it for me.

12 BY MR. SOMVICHIAN:

13 Q. If I asked you details about how the
14 Google Analytics was set up, would you have any
15 basis to answer, based on your own personal 13:39:26
16 knowledge?

17 MS. RIVAS: Objection. Vague and
18 ambiguous. Overbroad.

19 THE WITNESS: No. The professionals do
20 that. I don't know. 13:39:32

21 BY MR. SOMVICHIAN:

22 Q. Did you ever ask the people at Four Dog
23 whether they had any -- strike that.

24 Did you ever talk to the people at Four
25 Dog about the information reflected in Exhibit 4? 13:40:12

Page 145

1 A. Not that I recall.

2 Q. You didn't go to them and say, "Hey, my
3 clicks from Facebook/CPC looked like the average
4 time on-site is only a second. What's going on
5 there?" You didn't have a conversation with them 13:40:33
6 about that in any way?

7 MS. RIVAS: Objection. Vague and
8 ambiguous. Argumentative.

9 THE WITNESS: Not that I recall.

10 BY MR. SOMVICHIAN: 13:40:41

11 Q. Did you ever talk to anybody at Four Dog
12 about any aspect of your Google Analytics reports?

13 MS. RIVAS: Objection. Vague and
14 ambiguous.

15 THE WITNESS: They set it up for me. They 13:40:48
16 showed me where the reports were. I looked at them.
17 It all seemed like it made sense. That was the
18 extent of our conversations.

19 BY MR. SOMVICHIAN:

20 Q. So after -- after it was set up, did you 13:40:58
21 ever have any discussions with them about any of the
22 data that you were seeing?

23 MS. RIVAS: Vague and ambiguous.

24 THE WITNESS: Not that I recall.

25 BY MR. SOMVICHIAN: 13:41:07

1 Q. You don't know what that means; right?

2 A. I will rely on my attorneys.

3 MS. RIVAS: Same objections.

4 Argumentative.

5 BY MR. SOMVICHIAN: 14:34:54

6 Q. Rely on your attorneys for what?

7 A. I will rely on my attorneys to counsel me
8 through the process of this suit.

9 Q. Do you have any bas- -- independent basis
10 to believe that any of the clicks on your Facebook 14:35:05
11 ads were affected by the "Failure to conduct
12 Off-Line Filtering"?

13 MS. RIVAS: Objection. Vague and
14 ambiguous. Calls for expert testimony.
15 Argumentative. Seeks a legal conclusion. 14:35:17

16 THE WITNESS: I think that it will require
17 the testimony of experts and access to more data in
18 order to get to the bottom of what happened here.

19 BY MR. SOMVICHIAN:

20 Q. Is it your intention to pursue claims on 14:35:35
21 behalf of a class for the failure to conduct
22 Off-Line Filtering?

23 MS. RIVAS: Objection. Seeks a legal
24 conclusion. Lacks foundation. Vague and ambiguous.

25 THE WITNESS: I will rely on my attorneys 14:35:46

1 and experts to help me with that.

2 BY MR. SOMVICHIAN:

3 Q. Mr. Fox, do you have an understanding of
4 what the next item refers to, d, "Improper Billing
5 for 'Double Clicks'"? 14:36:00

6 A. Same answer as b and c. I will rely on my
7 attorneys and my experts to help me.

8 MS. RIVAS: Same objections.

9 BY MR. SOMVICHIAN:

10 Q. So you don't have -- you don't have 14:36:09
11 independent knowledge of what that means; right?

12 MS. RIVAS: Objection. Vague and
13 ambiguous. Lacks foundation. Argumentative.
14 Harassing.

15 MR. SHUB: It's attorney-client to the 14:36:19
16 extent if he knows based on what we told him.

17 THE WITNESS: It will require expert
18 testimony and access to more data than I have to
19 make that determination.

20 BY MR. SOMVICHIAN: 14:36:32

21 Q. Do you have an understanding of what any
22 of these items a through k refer to?

23 MS. RIVAS: Same objections.

24 THE WITNESS: Same answer. I'll
25 require -- I'll rely on my attorneys and my experts 14:36:50

1 to help figure out --

2 BY MR. SOMVICHIAN:

3 Q. What they are?

4 A. -- what those mean and what we are

5 alleging. 14:37:01

6 Q. For any of the items listed in the
7 supplemental response to interrogatory 11, items a
8 through k, do you have any basis to believe that any
9 of these issues affected the clicks on your Facebook
10 ads? 14:37:18

11 MS. RIVAS: Objection. Seeks a legal
12 conclusion. Lacks foundation. Seeks expert
13 testimony. Vague and ambiguous.

14 THE WITNESS: I'll rely on my attorneys
15 and experts to make that determination. 14:37:30

16 BY MR. SOMVICHIAN:

17 Q. Mr. Fox, how are you going to go about
18 deciding whether you agree with the claims in this
19 case?

20 MS. RIVAS: Objection. 14:37:51

21 MR. SHUB: Attorney-client.

22 MS. RIVAS: Attorney-client privilege.
23 Vague and ambiguous. Relevancy.

24 I mean, I don't even understand what you
25 are trying to get at. 14:38:03

Page 189

1 BY MR. SOMVICHIAN:

2 Q. You can answer.

3 A. I'll rely on my attorneys and my experts
4 to help me make those determinations.

5 Q. Are you able to provide any input or 14:38:10
6 guidance to your lawyers and your experts in terms
7 of what types of claims should be asserted in this
8 case?

9 MS. RIVAS: Objection. Asked and answered
10 multiple times. Argumentative. Vague and 14:38:24
11 ambiguous.

12 THE WITNESS: I'll do whatever I can do,
13 whatever I'm asked to do to help my attorneys and my
14 experts pursue this matter.

15 BY MR. SOMVICHIAN: 14:38:38

16 Q. Can you think of anything that you can do
17 to help inform the judgment about whether issues A
18 through K here are proper issues to pursue in a
19 class action against Facebook?

20 MS. RIVAS: Same objections. Lacks 14:38:50
21 foundation. Vague and ambiguous. Argumentative.

22 MR. SHUB: And badgering. Let's add that
23 one, because it is.

24 THE WITNESS: I will rely on the help of
25 my experts and my attorneys for that matter. 14:39:02

1 MR. SOMVICHIAN: If we can take a short
2 break. We are almost done.

3 THE VIDEOGRAPHER: We are off the record.
4 The time is 3:12 p.m.

5 (Off the record.) 15:12:30

6 THE VIDEOGRAPHER: Back on the record.
7 The time is 3:19 p.m.

8 BY MR. SOMVICHIAN:

9 Q. Mr. Fox, can you look at Exhibit 9 again,
10 please. We were looking at a list of issues on 15:19:16
11 page 4, items a through k.

12 A. Yep.

13 Q. Do you have any understanding as to
14 whether any of these issues relate to either
15 fraudulent clicks or invalid clicks? 15:19:52

16 MS. RIVAS: Objection. Lacks foundation.
17 Calls for expert testimony and legal conclusion.

18 THE WITNESS: I would rely on my attorneys
19 and my experts to make that determination.

20 BY MR. SOMVICHIAN: 15:20:05

21 Q. You don't have any independent basis to
22 conclude whether any of these issues should be
23 considered fraudulent clicks or invalid clicks or
24 anything else; right?

25 MS. RIVAS: Same objections. Compound. 15:20:16

Page 212

1 THE WITNESS: I rely on my attorneys and
2 my experts to help me make that determination.

3 BY MR. SOMVICHIAN:

4 Q. And you haven't made any independent
5 judgment about that issue; right? 15:20:24

6 MS. RIVAS: Same objections.

7 THE WITNESS: I'll rely on my attorneys
8 and my experts to help me make that determination.

9 BY MR. SOMVICHIAN:

10 Q. You haven't made an independent judgment 15:20:31
11 on that issue; correct?

12 MS. RIVAS: Vague and ambiguous.

13 THE WITNESS: I have not.

14 BY MR. SOMVICHIAN:

15 Q. Does the terminology of a "static website" 15:20:57
16 as opposed to a "dynamic website" have any meaning
17 to you?

18 MS. RIVAS: Vague and ambiguous.

19 THE WITNESS: I know a tiny bit about it.

20 BY MR. SOMVICHIAN: 15:21:06

21 Q. Do you know if your website is a static
22 website or a dynamic website?

23 A. It's a little bit of both, to my
24 understanding.

25 Q. What's your understanding of those 15:21:13